



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/931,498 | 08/16/2001 | Robert G. Gibson | CUS3-BP54 | 3683 |

7590 01/21/2003

Albin H. Gess
Price and Gess
Suite 250
2100 S.E. Main Street
Irvine, CA 92614-6238

EXAMINER

VU, STEPHEN A

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,498

Applicant(s)

Gibson et al

Examiner

Stephen Vu

Art Unit

3636



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 16, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Aug 16, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

Art Unit: 3636

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 21a,21b,35. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 23 objected to because of the following informalities: claim 23 is stated to be dependent from itself. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "the outside perimeter" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3636

5. Claim 3 recites the limitation "the open end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 8 recites the limitations "the open end" and "the closed end" in line 2. There is insufficient antecedent basis for these limitations in the claim.

7. Claim 10 recites the limitation "the closed end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 11 recites the limitation "the opened end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 14 appears to be indefinite, because the phrase "foam or quilted material" renders the claim indefinite because the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

10. Claim 25 appears to be indefinite, because the phrase "laminated or quilted material" renders the claim indefinite because the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3636

12. Claims 1-4 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemp.

Kemp shows a combination seat-cushion and leg-warmer comprising a top (5), a bottom, a fastener (10) extending along the outside perimeter of the top and bottom, and an envelope (1).

With claims 2 and 16, the top is padded.

With claims 3-4, the top is attached at a portion of a perimeter by a strap (7) to an open end of the envelope.

With claim 15, the top, bottom, and envelope each has four sides.

With claims 17-18, the top is interpreted to be attached to a side by a strap to the envelope at an open end.

13. Claims 1-4,6,8,10-11,15-19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Povey.

Povey shows a combination seat-cushion and leg-warmer (10) comprising a top (70), a bottom (56), a fastener (74) extending along the outside perimeter of the top and bottom, and an envelope (30).

With claims 2 and 16, the top is padded.

With claims 3-4, the top is attached at a portion of a perimeter by a strap to an open end of the envelope.

With claims 6 and 19, a carrying handle (72) is attached to the bottom.

Art Unit: 3636

With claims 8 and 21, the envelope comprises a fastener (48) along its length from an open end to a closed end.

With claim 10, the envelope has a fastener around its perimeter at a closed end of the envelope.

With claim 11, a belt (52) is attached to an open end of the envelope.

With claim 15, the top, bottom, and envelope each has four sides.

With claims 17-18, the top is interpreted to be attached to a side by a strap to the envelope at an open end.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

Art Unit: 3636

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Rothman.

Kemp discloses the claimed invention except for the strap to have a pouch. Rothman teaches a cover comprising a pouch (50) attached to the back panel. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a pouch of Rothman's cover to the strap of Kemp's combination, in order to provide a holding means for miscellaneous items.

17. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Povey.

Kemp discloses the claimed invention except for the bottom to have a carrying handle. Povey teaches a combination seat-cushion and leg-warmer (10) comprising a carrying handle (72) attached to the bottom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a carrying handle of Povey's combination seat cushion and leg warmer to the bottom of Kemp's apparatus in order to make it easy for the user to carry the apparatus.

18. Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Livingston.

Art Unit: 3636

Kemp discloses the claimed invention except for the combination to have a shoulder strap attached to the bottom. Livingston teaches a combination pillow and tote bag having a shoulder strap (34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a shoulder strap of Livingston's invention to the bottom of Kemp's combination seat cushion and leg warmer apparatus, in order to allow a user to transport the apparatus by way of carrying it on the user's shoulder.

19. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Hyman.

Kemp discloses the claimed invention except for the envelope to have a pleat. Hyman teaches an outerwear comprising pleats (11) to permit freedom of movement without unduly increasing the bulk of the garment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate pleats as taught by Hyman to the envelope of Kemp's apparatus, in order to permit freedom of movement without unduly increasing the bulk of the garment.

20. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp.

Kemp discloses the claimed invention except for the top and envelope to be made of a tear-proof, water resistant material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the top and envelope using a tear-proof, water resistant material, since it has been held to be within the general skill of a worker in the art

Art Unit: 3636

to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With claim 14, Kemp discloses the claimed invention except for the top and envelope to be made of a foam or quilted material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the top and envelope using a foam or quilted material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

21. Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Povey in view of Livingston.

Povey discloses the claimed invention except for the combination to have a shoulder strap attached to the bottom. Livingston teaches a combination pillow and tote bag having a shoulder strap (34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a shoulder strap of Livingston's invention to the bottom of Povey's combination seat cushion and leg warmer apparatus, in order to allow a user to transport the apparatus by way of carrying it on the user's shoulder.

22. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Povey in view of Hyman.

Povey discloses the claimed invention except for the envelope to have a pleat. Hyman teaches an outerwear comprising pleats (11) to permit freedom of movement without unduly

Art Unit: 3636

increasing the bulk of the garment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate pleats as taught by Hyman to the envelope of Povey's apparatus in order to permit freedom of movement without unduly increasing the bulk of the garment.

23. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Povey in view of Rothman .

Povey discloses the claimed invention except for the top to have a pouch. Rothman teaches a cover comprising a pouch (50) attached to the back panel. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a pouch of Rothman's cover to the inside of Povey's envelope, in order to provide a holding means for miscellaneous items.

24. Claims 13-14 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Povey.

Povey discloses the claimed invention except for the top and envelope to be made of a tear-proof, water resistant material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the top and envelope using a tear-proof, water resistant material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Art Unit: 3636

With claim 14, Povey discloses the claimed invention except for the top and envelope to be made of a foam or quilted material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the top and envelope using a foam or quilted material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With claim 22, Povey discloses the claimed invention except for the bottom to be made of a rugged waterproof material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the bottom using a rugged waterproof material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With claim 24, Povey discloses the claimed invention except for the bottom to be made of a vinyl material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the bottom using a vinyl material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With claim 25, Povey discloses the claimed invention except for the top and envelope to be made of a laminated or quilted material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the top and envelope using a

Art Unit: 3636

laminated or quilted material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bogenberger, Vitale et al, Albertieri, Morgan, Stock, Comora, Handelman, Grove, Sakurai et al, Kraft, and Anderson are cited as showing similar types of combination seat cushion and leg warmer.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Art Unit: 3636

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Stephen Vu
Patent Examiner
January 13, 2003



Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600